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Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

DENNIS DORAN,
Petitioner,

vs.

TRAVELERS INDEMNITY COMPANY,
Respondent.

On Petition For Writ of Certiorari from the
United States Court of Appeals For the Eleventh Circuit

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

	Page
Table of Contents	i
Table of Authorities	i
Statement of the Case	1
Summary of Argument	2
Argument	3
Conclusion	8
Certificate of Service	9
Affidavit of Mailing	10

TABLE OF AUTHORITIES

Allstate Ins. Co. v. O'Brien, 172 Ga.App. 693, 311 S.E.2d 437 (1984)	6
Associated Indemnity Corp. v. Sermons, Case No. 69837 (Georgia Court of Appeals, July 16, 1985) ____ S.E.2d ____	6
Bailey v. Georgia Mut. Ins. Co., 168 Ga.App. 706, 309 S.E.2d 870 (1983)	6
Chaney v. Georgia Mut. Ins. Co., 174 Ga.App. 134, ____ S.E.2d ____ (1985)	6
Cone v. State Farm Mut. Ins. Co., 165 Ga.App. 766, 302 S.E.2d 620 (1983)	6
Dixson v. Travelers Ind. Co., 167 Ga.App. 198, 305 S.E.2d 900 (1983)	6

Douglas v. Jefferson-Pilot Fire & Cas. Co., Case No. 70204 (Georgia Court of Appeals, June 21, 1985) ____ S.E.2d ____ 6

Drexler v. Georgia Farm Bur. Mut. Ins. Co., 254 Ga. 98, 326 S.E.2d 741 (1985) 6

Enfinger v. Int'l Ind. Co., 253 Ga. 185, 317 S.E.2d 816 (1984) 6

Flewellen v. Atlanta Cas. Co., 250 Ga. 709, 300 S.E.2d 673 (1983) 3,6

Gasaway v. St. Paul Fire & Marine Ins. Co., 165 Ga. App. 861, 303 S.E.2d 75 (1983) 6

Georgia Amer. Ins. Co. v. Varnum, 171 Ga.App. 190, 318 S.E.2d 814 (1984) 7

Georgia Farm Bur. Mut. Ins. Co. v. White, Case No. 69619 (Georgia Court of Appeals, March 15, 1985) ____ S.E.2d ____ 6

Gomez v. Perez, 409 U.S. 535, 93 S.Ct. 872 5

Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848 5

Grange Mut. Ins. Co. v. Hall, 173 Ga.App. 382, 326 S.E.2d 497 (1985) 6

Hawkins v. Travelers Ins. Co., 166 Ga.App. 619, 305 S.E.2d 138 (1983) 6

Holt v. Int'l Ind. Co., 171 Ga.App. 817, 321 S.E.2d 374 (1984) 7

Int'l Ind. Co. v. Lott, 170 Ga.App. 728, 318 S.E.2d 150 (1984) 7

Int'l Ind. Co. v. Woods, 169 Ga.App. 184, 315 S.E.2d 20 (1983) 7

McLaughlin v. Florida, 379 U.S. 184, 85 S.Ct. 283 4

Miller v. Allstate Ind. Co., 173 Ga.App. 114, 325 S.E.2d 599 (1984) 7

Morris v. Fidelity & Casualty Co. of N.Y., 169 Ga.App. 883, 315 S.E.2d 451 (1984) 7

Mullins v. First General Ins. Co., 253 Ga. 486, 322 S.E.2d 265 (1984) 7

Nalley v. Select Ins. Co., 251 Ga. 722, 313 S.E.2d 465 (1983) 7

Oyama v. California, 332 U.S. 633, 68 S.Ct. 269..... 5

Parham v. Hughes, 441 U.S. 347, 99 S.Ct. 1742 4,5

Perry v. Int'l Ind. Co., 251 Ga. 709, 309 S.E.2d 139 (1983) 7

Phoenix Ins. Co. v. Womack, 174 Ga.App. 140, 329 S.E.2d 282 (1985) 7

Reed v. Georgia Farm Bur. Mut. Ins. Co., 171 Ga.App. 126, 318 S.E.2d 746 (1984) 7

Reed v. Reed, 404 U.S. 71, 92 S.Ct. 251 5

Rowland v. Southern Guaranty Ins. Co., 169 Ga.App. 554, 313 S.E.2d 753 (1984) 7

St. Paul Fire & Marine Ins. Co. v. Nixon, 252 Ga. 469, 314 S.E.2d 215 (1984) 7

Southern Guaranty Ins. Co. v. Cotton States, Case No. 70393 (Georgia Court of Appeals, September 3, 1985) ____ S.E.2d ____..... 7

Stafford v. Allstate Ins. Co., 252 Ga. 38, 311 S.E.2d 437 (1984) 7

Teasley v. Mathis, 243 Ga. 561, 255 S.E.2d 57 (1979) ... 5

Tolison v. Georgia Farm Bur., 253 Ga. 97, 317 S.E.2d 185 (1984) 7

United States Auto. Assoc. v. Ansley, Case No. 41928 (Georgia Supreme Court, September 4, 1985) ____ S.E.2d ____ 7

Vandergriff v. Travelers Ins. Co., 172 Ga.App. 198, 322 S.E.2d 522 (1984) 7

Watson v. Employers Liability Assur., 75 S.Ct. 166 (1954) 4

Wiard v. Phoenix Ins. Co., 251 Ga. 698, 310 S.E.2d 221 (1984) 7

O.C.G.A. §33-34-3 2,3,6

O.C.G.A. §33-34-4 3

O.C.G.A. §33-34-5 3

U.S. Const. Amend. 14 2

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STATEMENT OF THE CASE

During November, 1974, the respondent, Travelers Indemnity Company issued through its local agents a general commercial liability insurance policy to James O'Quinn, d/b/a O'Quinn Automotive Electrical ("the policyholder") 2116 Danese Street, Jacksonville, Florida. Also included in the insurance policy was a Florida endorsement for no fault coverage, commonly referred to as personal injury protection ("PIP"). At that time, the only vehicles owned by the policyholder were licensed and garaged in Florida. The policy provided that, "if a vehicle was used in another state, then the policy would provide the minimum no-fault coverage required by that state.

On October 29, 1979, the insurer issued and delivered to the policyholder in Florida an endorsement covering a 1974 Dodge van, Florida License No. 2GK25539, but garaged in Georgia.

In moving for summary judgment in the district court, the petitioner here, plaintiff there, asserted a claim for denial of equal protection but not for denial of due process. Similarly, on appeal at the Eleventh Circuit, the petitioner again raised the question of equal protection but not due process. Accordingly, the Eleventh Circuit in its opinion ruled upon the equal protection issue but not upon any question of due process. Therefore, the Petition for Certiorari, as far as it concerns the alleged denial of due process, should not be granted for the simple reason that his claim was never raised or ruled upon below.

SUMMARY OF ARGUMENT

The petitioner has not been denied equal protection under the law as required by the Fourteenth Amendment to the United States Constitution. The Georgia no fault law at O.C.G.A. § 33-34-3(a) treats automobile liability insurance policies issued by insurers and delivered to insureds out of state differently from policies issued by insurers and delivered to insureds within the State of Georgia. An insurer issuing a policy outside the state is not required to offer optional no fault coverage.

This difference in treatment depending upon where the policy is issued does not create a suspect class. This classification is rationally related to the legislative purpose of the state's no-fault scheme. The requirements of offering optimal coverage are burdensome and complex. The state legislature decided to exempt an insurer issuing a policy out of state from this requirement.

ARGUMENT

At issue in this case is whether Georgia's legislative scheme for no-fault automobile insurance, which distinguishes between policies issued (*i.e.*, delivered) to insureds residing outside the territorial confines of that state and those issued to Georgia residents, violates the constitutional guaranty of equal protection under the laws.

To answer this question it is necessary to review briefly Georgia's no fault scheme. Georgia provides two types of no-fault coverage for personal injuries. The first is the basic $5,000 no fault coverage, O.C.G.A. § 33-34-4. All policies must carry this coverage regardless of who issues the policy, where it is issued, or where the injury occurs. O.C.G.A. § 33-34-3(a)(2).

The other type of no fault coverage is the so-called optional coverage providing benefits greater than $5,000 and up to a maximum of $50,000. O.C.G.A. § 33-34-5. This optional coverage is required to be offered to prospective insureds and must be rejected in writing by them but is not mandatory on the insureds. O.C.G.A. § 33-34-5(b) (1975). For all policies issued to Georgia residents, the insurer must offer the optional coverage in the exact manner required by law, O.C.G.A. § 33-34-3(a)(1) or face the unpalatable prospect that upon demand by an injured insured and payment of a negligible premium, such coverage will be deemed retroactively effective. *Flewellen v. Atlanta Cas. Co.*, 250 Ga. 709, 300 S.E.2d 673 (1983).

Both the United States District Court for the Southern District of Georgia and the Eleventh Circuit Court of Appeals construed this plan so as to relieve an insurer issuing a policy out of state of the necessity for offering optional coverage. It is this interpretation of the statute which the petitioner here claims violates the guaranty of equal protection.

The petitioner's frequent statement in the Petition for Writ of Certiorari that the law distinguishes between foreign and

domestic insurers and discriminates in favor of foreign insurers is inaccurate. A Georgia domestic insurer who issues a policy to a Florida resident is similarly relieved of the burden of offering optional coverages. A foreign insurer, like the respondent, who issues the policy in Georgia is required to offer the coverage.

Disparate treatment arises because of where the policy is issued. Both the policy and the endorsement covering the vehicle involved in the accident were issued and delivered to the policyholder in Florida. Had the policyholder lived in Georgia, then the case below would have turned out differently.

The threshold question in the equal protection area is whether there is a class of persons who are being treated differently from others. If there is no such class and all persons are being treated alike, then there can be no denial of equal protection. It is for this reason that *Watson v. Employers Liability Assurance,* 75 S.Ct. 166 (1954) is inapposite to this case. The Supreme Court in *Watson* found that there was no class of persons subject to disparate treatment because the allegedly unconstitutional Louisiana statute treated both domestic and foreign insurers alike. *Watson* does not hold or imply that, if the two classes of insurers were treated differently, there would necessarily be a denial of equal protection. *Watson* simply clarifies that further examination is required if there is a class of persons subject to a different treatment.

There is admittedly in the case now before the court such a class of persons subject to disparate treatment. This class consists of the persons who are covered under an automobile liability insurance policy issued to a policyholder residing outside of Georgia. The next question to be answered is whether the class so created is a "suspect" class whose disparate treatment violates the guaranty of equal protection. *Parham v. Hughes,* 441 U.S. 347, 99 S.Ct. 1742, 60 L.Ed. 269 (1979).

Classifications based on certain immutable human characteristics are inherently suspect. *McLaughlin v. Florida,*

379 U.S. 184, 85 S.Ct. 283, 13 L.Ed. 222 (race); *Oyama v. California,* 332 U.S. 633, 68 S.Ct. 269, 92 L.Ed. 249 (national origin); *Graham v. Richardson,* 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed. 534 (alienage); *Gomez v. Perez,* 409 U.S. 535, 93 S.Ct. 872, 35 L.Ed.2d 56 (illegitimacy); *Reed v. Reed,* 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 225 (gender). Clearly, there is no suspect class involved in the case now before the Court.

Since there is no suspect class, the interpretation of the statute expressed below "is entitled to presumption of validity and will be upheld 'unless the varying treatment of different groups of persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational.' " *Parham v. Hughes, supra,* citing *Vance v. Bradley,* 440 U.S. at 97, 99 S.Ct. at 943. In *Parham,* Georgia's statutory scheme prohibiting the father of an illegitimate child who had not publicly declared his paternity from suing in tort from the wrongful death of the child was upheld as rationally related to the state's interest in determining paternity. Similarly, in the instant case, Georgia's statutory no-fault scheme treating policies issued to persons residing outside of Georgia differently from policies issued to Georgia residents is rationally related to a legitimate state's goal.

The objectives of the Georgia no-fault law were to eliminate wasteful litigation over small claims and provide minimal insurance for accident victims. *Teasley v. Mathis,* 243 Ga. 561, 255 S.E.2d 57 (1979). Thus, the insureds benefited by prompt payment of small claims, and the insurers benefited by reducing expenses of litigation on these same claims.

While the plaintiff argues that the purpose of this same law was "to compensate injured *Georgia residents,* (emphasis added)" there is nothing in either the language of the statute or the legislative history to indicate such a parochial intent. Anyone occupying a car and involved in an accident in the State of Georgia automatically has the basic $5,000 no-fault coverage,

whether he is a resident of Georgia or not. O.C.G.A. § 33-34-3(a)(2).

As part of the same scheme, the legislature decided to relieve insurers of any obligation to offer the higher optional coverages, at least where the policy was issued outside of the state. "Requirements relating to optional coverages are specific and require careful administration." *Doran v. Travelers Indemnity Company,* Case No. 41550 (Sup. Ct. of Ga., February 27, 1985); Case No. 83-8566 (Eleventh Circuit, August 8, 1985). Just to give this Court an idea of the demands of that administration, during the last five years, there have been approximately 50 decisions rendered in the appellate courts of Georgia regarding offers of optional no fault coverages.

The following list of cases regarding this problem are not exhaustive but it should give this Court some idea of the complexity involved in administering this statute. *Allstate Ins. Co. v. O'Brien,* 172 Ga.App. 693, 311 S.E.2d 437 (1984). *Associated Indemnity Corp. v. Sermons,* Case No. 69837 (Georgia Court of Appeals, July 16, 1985) ____ S.E.2d ____. *Bailey v. Georgia Mut. Ins. Co.,* 168 Ga.App. 706, 309 S.E.2d 870 (1983). *Chaney v. Georgia Mut. Ins. Co.,* 174 Ga.App. 134, ____ S.E.2d ____ (1985). *Cone v. State Farm Mut. Ins. Co.,* 165 Ga.App. 766, 302 S.E.2d 620 (1983). *Dixson v. Travelers Ind. Co.,* 167 Ga.App. 198, 305 S.E.2d 900 (1983). *Douglas v. Jefferson-Pilot Fire & Cas. Co.,* Case No. 70204 (Georgia Court of Appeals, June 21, 1985) ____ S.E.2d ____. *Drexler v. Georgia Farm Bur. Mut. Ins. Co.,* 254 Ga. 98, 326 S.E.2d 741 (1985). *Enfinger v. Int'l Ind. Co.,* 253 Ga. 185, 317 S.E.2d 816 (1984). *Flewellen v. Atlanta Cas. Co.,* 250 Ga. 709, 300 S.E.2d 673 (1983). *Gasaway v. St. Paul Fire & Marine Ins. Co.,* 165 Ga.App. 861, 303 S.E.2d 75 (1983). *Georgia Farm Bur. Mut. Ins. Co. v. White,* Case No. 69619 (Georgia Court of Appeals, March 15, 1985) ____ S.E.2d ____, *Grange Mut. Ins. Co. v. Hall,* 173 Ga.App. 382, 326 S.E.2d 497 (1985). *Hawkins v. Travelers Ins. Co.,* 166 Ga.App. 619, 305 S.E.2d 138 (1983).

Holt v. Int'l Ind. Co., 171 Ga.App. 817, 321, S.E.2d 374 (1984). *Int'l Ind. Co. v. Lott*, 170 Ga.App. 728, 318 S.E.2d 150 (1984). *Georgia Amer. Ins. Co. v. Varnum*, 171 Ga.App. 190, 318 S.E.2d 814 (1984). *Int'l Ind. Co. v. Woods*, 169 Ga.App. 184, 315 S.E.2d 20 (1983). *Miller v. Allstate Ind. Co.*, 173 Ga.App. 114, 325 S.E.2d 599 (1984). *Morris v. Fidelity & Casualty Co. of N.Y.*, 169 Ga.App. 883, 315 S.E.2d 451 (1984). *Mullins v. First General Ins. Co.*, 253 Ga. 486, 322 S.E.2d 265 (1984). *Nalley v. Select Ins. Co.*, 251 Ga. 722, 313 S.E.2d 465 (1983). *Perry v. Int'l Ind. Co.*, 251 Ga. 709, 309 S.E.2d 139 (1983). *Phoenix Ins. Co. v. Womack*, 174 Ga.App. 140, 329 S.E.2d 282 (1985). *Reed v. Georgia Farm Bur. Mut. Ins. Co.*, 171 Ga.App. 126, 318 S.E.2d 746 (1984). *Rowland v. Southern Guaranty Ins. Co.*, 169 Ga.App. 554, 313 S.E.2d 753 (1984). *St. Paul Fire & Marine Ins. Co. v. Nixon*, 252 Ga. 469, 314 S.E.2d 215 (1984). *Southern Guaranty Ins. Co. v. Cotton States*, Case No. 70393 (Georgia Court of Appeals, September 3, 1985) ____ S.E.2d ____. *Stafford v. Allstate Ins. Co.*, 252 Ga. 38, 311 S.E.2d 437 (1984). *Tolison v. Georgia Farm Bur.*, 253 Ga. 97, 317 S.E.2d 185 (1984). *United States Auto. Assoc. v. Ansley*, Case No. 41928 (Georgia Supreme Court, September 4, 1985) ____ S.E.2d ____. *Vandergriff v. Travelers Ins. Co.*, 172 Ga.App. 198, 322 S.E.2d 522 (1984). *Wiard v. Phoenix Ins. Co.*, 251 Ga. 698, 310 S.E.2d 221 (1984). In view of these recent court decisions regarding offer of optional coverages, the legislature's decision to exempt insurers issuing a policy outside the state of the requirement of offering optional coverages seems wise indeed.

Certainly, an insurance company doing business in different states is accustomed to dealing with the laws of those different states. For example, the respondent here is a Connecticut based company selling insurance throughout the 50 states in the United States. In that regard, the respondent is familiar with the requirements of the laws of those various states. However, the question presented in this case is whether there is something wrong about applying Georgia law in Georgia but not in

Florida. Perhaps, the Georgia legislature might have required that the latter be done, but it did not, and the court should not substitute their own judgment on this question for that of the state legislature.

CONCLUSION

The distinction which the Georgia no-fault scheme draws between policies issued outside of the state versus policies insured inside the state is rationally related to the law's overall purpose. While requiring that optional coverages be offered on policies insured inside the state, the legislature realized that this could oppose a serious burden on insurers issuing policies outside the state. This burden is particularly understandable in light of the complexity of the legal issues raised in Georgia regarding offers of optional no-fault coverage. Because the statute as interpreted is rationally related to a legitimate state goal and because the statute does not create any suspect class, there is no denial of equal protection, and the Writ of Certiorari should not be granted, and the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

DICKINS & IRWIN

By: Oliver B. Dickins, Jr. By: R. CHRIS IRWIN with permission

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CERTIFICATE OF SERVICE

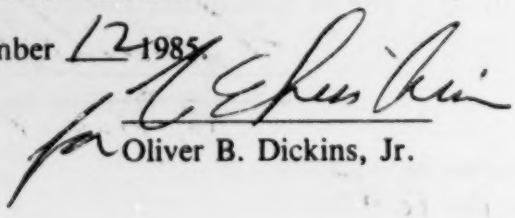
The only party required to be served is the petitioner, Dennis Doran, whose present address is unknown to the respondent. The petitioner has been served through his attorney, Berrien L. Sutton.

I certify that today I served three copies of the foregoing Response to Petition for Writ of Certiorari upon:

Berrien L. Sutton
Post Office Box 496
Homerville, Georgia 31634

by mailing him correct copies, properly addressed and with adequate postage affixed thereon.

Dated: November 12, 1985.



Oliver B. Dickins, Jr.

AFFIDAVIT OF MAILING

Personally appeared before the undersigned attesting officer, comes ~~Oliver B. Dickins, Jr.~~ ROBERT CHRISTOPHER IRWIN, JR., who, after being duly sworn, states on oath as follows:

I am a member of the bar of the Supreme Court of the United States. On the 12 day of November at 4 o'clock P.m, I deposited forty copies of the Response to Petition for Writ of Certiorari to the United States Supreme Court in the United States Mail, postage prepaid, and properly addressed to the clerk of this court. This mailing took place within the permitted time for filing of this Response to Petition for Writ of Certiorari with the Clerk of the Supreme Court of the United States.

This 12 day of November, 1985.

~~Oliver B. Dickins, Jr.~~
ROBERT CHRISTOPHER IRWIN, JR.

Sworn to and subscribed
before me this 12th day
of November, 1985.

Notary Public
Commission Expires:

Notary Public, Georgia, State at Large
My Commission Expires Aug. 3, 1987